

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 367 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JETHIBEN PAMANDAS GVALANI

Versus

DG & IG OF POLICE, GUJ. STATE, A'BAD & OTHERS

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Appearance:

MS KUSUM M SHAH for the Petitioner

MR NN PANDYA for Respondents No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/96

ORAL JUDGEMENT

1. The petitioner was appointed in 1968 as constable in Women Branch of the Police in District of Banaskantha. The petitioner has made a statement in this Special Civil Application that the District of Banaskantha was and is backward and no girls were joining Police Force at the time when the petitioner joined and she was amongst the pioneers to join Police Force. The petitioner was promoted as II Grade Head Constable in the year 1975 and

was further promoted as I Grade Head Constable in July, 1983. The petitioner has come up with a case that in the State of Gujarat there are 18 Districts and in each District promotions to I grade and II Grade Head constables are invariable given from amongst constables of the District. Till 1981 there was no post for Sub-Inspector or higher up in women police force in any of the District of the State of Gujarat. In the year 1981, for the first time, in each District of Gujarat, the Government has taken a decision to create one post of Sub-Inspector in women police force. The appointment to this created post of Sub-Inspector in the District concerned is to be made by promotion from lower ranks of the police force of a lady. The appointment of Sub-Inspector, women police force, by promotion is to be made by the Range Deputy General of Police. In order to enable him to make appointments by promotion, Deputy Inspector General of each range maintains in his office a list of lady Head Constables qualified for promotion. The District Banaskantha at the relevant time as per the case of the petitioner was under Deputy Inspector General of Police, Gandhinagar Range. In women branch of police force in District Banaskantha there were 12 women constables, two II grade Head Constables and two I grade Head Constables. The petitioner is the senior most Head constable I Grade in the women branch of Police force in the district. The petitioner was called for interview for promotion as Sub-Inspector of Police against the newly created post. The interviews were held in the month of February, 1981 by D.I.G.. The petitioner was not intimated about her result of the interview nor she was given out that she will not be given appointment as P.S.I. in women police force. The petitioner has further come up with a case that on inquiry she was told that her matter regarding the appointment on the post of P.S.I. in women police force is under consideration.

2. Under the order dated 18-1-1984 one Lilaben Kelavala from Broach in Baroda Range has been ordered to be posted on promotion as P.S.I women police force in Banaskantha District. The petitioner further states in the writ petition that though the order of the appointment of promotion of Lilaben Kelavala has been made, but she has still not taken the charge as P.S.I. Banaskantha. This action of the respondents have given rise to this Special Civil Application before this Court.

3. After filing of this Special Civil Application, the petitioner had moved an application for amendment of this Special Civil Application. The respondents have filed a reply to this Special Civil Application.

4. Heard learned counsel for the parties. The counsel for the petitioner contended that the post of P.S.I in women police force has been created District wise and promotion has also been restricted to this post District wise. Lilaben Kelavala who has been ordered to be posted on promotion as P.S.I. women police force does not belong to Banaskantha District. She belongs to Range Baroda and as such, as per the respondents' own policy she could not have been given the promotion. It has next been contended that the petitioner has unblemished service record to her credit. No adverse remarks in her confidential report were ever made. She was the senior most lady Head Constable Grade I in District Banaskantha. Carrying further his contentions, the counsel for the petitioner urged that even if the criteria for the promotion is taken to be seniority cum merit, the petitioner was entitled for the promotion. Lastly, the counsel for the petitioner contended that the action of the respondent not to give the petitioner promotion is an example of favouritism and nepotism. Nothing positive has been given out by the respondent about the unsuitability of the petitioner for promotion to the post of P.S.I.. It is a case where the case of the petitioner was not fairly and impartially considered.

5. On the other hand, the learned counsel for the respondents contended that the petitioner has a right of consideration for promotion which right has not been denied to her. Her case for promotion has been considered by the departmental promotion committee, but she was not found fit. Not only the petitioner, but none of the women Head Constable in the Banaskantha District was found suitable. The respondents have further come up with a case that the rules were not framed for giving of the promotion on the post of P.S.I. women police force, and as such, the Commissioner of Police and the Range D.I.Gs were asked to fill up the post of women P.S.I. by giving local adhoc temporary promotion vide signal dated 18-2-82 and accordingly the D.P.C. met on 2-3-1982. It is the case of the respondents that none of the women Head Constable of Banaskantha District was found suitable for promotion. The names of willing women Head constable of other districts to go to Banaskantha District on promotion were called for. The justification has been given that Lilaben Kelavala had a good record, and as such she was given the promotion on adhoc and temporary basis with the posting in Banaskantha District. It is admitted case of the respondents in the reply that Lilaben Kelavala has not taken over the charge in Banaskantha District.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. This Special Civil Application has come up for admission before this court on 27th January, 1984. The order passed by this court is extracted below.

"Notice to the respondents no.1 and 2 returnable on 3rd February, 1984. In the meantime, the impugned order if not implemented, not to be implemented. Direct Service."

After service, this matter has come up for admission on 24th February, 1984 and the order made by this Court on the said date is as under:

"Rule. To be heard peremptorily in the month of April, 1984 first week. The interim relief to this effect that any promotion in this District shall be expressed to be subject to the result of this petition filed by Miss. K.M. Shah."

Both the counsels for the parties are unable to make the statement before this court whether Lilaben Kelavala had ultimately joined the post of P.S.I. Banaskantha District or not. The petitioner in the index though has given out that Annexure 'A' order dated 18-1-1994 is filed, but I do not find the said order on the record. So in the index a incorrect picture has been given out. On the other hand, from the amendment application filed on 24th April, 1996, it is apparent that the petitioner is not in possession of the said document. She prays for the direction to the respondents to produce the said order before this Court. This way of the filing of the petitions without the necessary documents is to be taken seriously. By giving the reference to the order dated 18-1-84 in the index, the petitioner has projected before this Court as if this order has been filed which has resulted in grant of the stay order in favour of the petitioner. The interim relief granted earlier was not continued and may be for the reason that it has come to the notice of the court that the order of promotion has not been filed. Though a serious view of this lapse on the part of the petitioner could have been taken, but as it is a case of promotion of the women Head Constable Grade I, I do not consider it appropriate to dismiss this petition on this ground. Now I may proceed with the merits of the matter.

7. The respondents in the reply have not denied that the criteria for promotion to the post of P.S.I. women

police force was seniority cum merit. The petitioner has made a categorical statement in this Special Civil Application that no adverse remarks are there in his service confidential report. She has also made a categorical statement that she is the senior most Head Constable Grade I in the Banaskantha District in the cadre concerned. These statements made by the petitioner have not been controverted. The respondents have stated in response to this averment that looking to the service record of the petitioner and other women unarmed Head constable of Banaskantha District, the departmental promotion committee had not found any women unarmed Head constable fit for promotion to the post of women P.S.I. on local adhoc and temporary basis, and as such she was not promoted. It is, in the presence of the fact that the criteria for promotion was seniority cum merit and in the absence of any positive adversity in the service record of the petitioner, normally order would have been of giving of the promotion to the petitioner. The respondents have given the reference that looking to the service record of the petitioner, she was not found suitable, but they have not disclosed the adverse record of the petitioner which has persuaded the departmental promotion committee to take the decision to dislodge the claim of local candidate for promotion to the post of women P.S.I. in Banaskantha District. It is a case where the post has been reserved for the local candidates of the District. Where the reservation is for local candidates and particularly of the women candidates, on the post of women P.S.I., the respondents should have seen that the local women is being promoted. The claim of the petitioner could have been refuted only when there are positive adversities in her service record, which is not the case here.

8. The respondents have not come up with a case that there are adverse remarks in the Annual Appraisal Performance Report of the petitioner or that she has been given penalties for misconduct, may be minor or major. The assessment of the suitability of an employee for promotion is to be made on the basis of his report in the Annual Appraisal Performance Report, on the basis of his work as certified in the report, and the penalty if any given to the employee. Any other thing if taken into consideration, then it must have relevance to his service record and a bearing on his suitability. But here is a case where the petitioner has been adjudged unsuitable for promotion by D.P.C. on the basis of undisclosed adverse service record. Where in the matter of denial of promotion to the senior employee, on her approach to this court, it is obligatory on the part of the respondents to

satisfy the court by bringing on the record, the relevant material that she has positive adversities in her service record to justify the denial of promotion. The respondents have not only failed to bring on the record any adversity in the service record of the petitioner, but even they have failed to disclose any material which could have been considered to justify the decision of the D.P.C. to adjudge the petitioner unsuitable for promotion to the post of women P.S.I.. From the facts which have come on the record and from the pleadings of the parties, I find sufficient merits in the contention of the learned counsel for the petitioner that it is a case of favouritism or nepotism in the matter of promotion. In the absence of any positive unsuitability for the promotion on the basis of her adverse service record, the only inference can be made that the D.P.C. has acted in an arbitrary manner. The decision of the D.P.C. to adjudge unsuitable to the petitioner for promotion is perverse.

9. In the result, this Sp. Civil Application is allowed. The decision of D.P.C. to adjudge the petitioner unsuitable for promotion to the post of P.S.I. in its meeting held on 2-3-1982 is quashed and set aside. The respondents are directed to convene the meeting of D.P.C. to consider the case of the petitioner afresh. This exercise should be undertaken by the respondents within a period of three months from the date of receipt of certified copy of this order. While considering the case of the petitioner, the observation as made by this Court in this judgment should also be kept in mind. In case on consideration of the case of the petitioner, if she is found suitable then necessary order for promotion should be made within a period of two months thereafter. In these eventualities she will be entitled for all the consequential benefits and her promotion should be relate back to the date on which she was adjudged unsuitable. The petitioner shall be entitled for the interest at the rate of 12% p.a. on the arrears of the fixation as a result of her promotion from the deemed date. The petitioner, a woman employee of the police department has been harassed unnecessarily and her just claim has been denied without any cogent and justified reason. She was compelled to approach this Court for a relief which normally should have been given at the end of the respondents. She has been put to suffer monetary burden of the expenses of this litigation. The counsel for the petitioner was asked to disclosed to this Court how much amount has been incurred by the petitioner towards the expenses of this litigation. She has given out that in all Rs.4000/- have been incurred by the petitioner as

expenses of this litigation. The respondent no.1 is directed to pay Rs.4000/- to the petitioner by way of costs of this petition. In case the petitioner on her being considered for promotion is not found suitable for the same by the D.P.C., it is expected of the respondents to make a reasoned order and a copy of the same may be sent to her by registered post. Rule is made absolute in the aforesaid terms.

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